Supreme Court, U.S.
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No. 90-1090

In the Supreme Court of the United States

OCTOBER TERM, 1990

IMMIGRATION AND NATURALIZATION SERVICE, ET AL.,
PETITIONERS

v.

NATIONAL CENTER FOR IMMIGRANTS' RIGHTS, ET AL.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JOINT APPENDIX

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PETITION FOR A WRIT OF CERTIORARI FILED JANUARY 7, 1991
CERTIORARI GRANTED APRIL 1, 1991

6 PP

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* The opinions and judgments of the district court and of the court of appeals are printed in the appendix to the petition for a writ of certiorari and have not been reproduced herein.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CV 83-7927-KN (JRx)

NATIONAL CENTER FOR IMMIGRANTS' RIGHTS, INC.,
ET AL., PLAINTIFFS

v.

IMMIGRATION AND NATURALIZATION SERVICE,
ET AL., DEFENDANTS

DOCKET ENTRIES

DATE	NR.	PROCEEDINGS
12/6/83	1.	Cplt. Issd sums.
		Case may be ref for disc to Mag Reichmann.
	2.	Memo of P/A in supp of appl for TRO.
	3.	Appl for TRO.
		LODGED TRO.
	4.	Exhibits in sup of plfts appl for TRO.
	5.	Declar of Peter A. Schey re serv of pltfs appl for TRO on counsel for dfts.
12-7-83	6.	Subm. as req by crt. Plaintiff
12-8-83	7.	ORD denying pltfs appl for TRO & setting hrg on prelim inj for 12-16-83, 11am.
*12-6-83	8.	MO: Ex parte appl for TRO argued & taken under subm.
*12-7-83	9.	Opp. to pltfs TRO. Defendant

DATE	NR.	PROCEEDINGS
	10.	MO: Appl for TRO will not be rule on until 12-8-83.
12/12/83	11.	Opp to pltfs motn fr prelim inj. Defendant
12/13/83	12.	REply breif. [sic] Plaintiff
12-16-83	13.	1st AMENDED COMPLAINT
12-15-83	14.	Ex Parte application to limit witnesses. defts
12-16-83	15.	Prelim Inj Hrng: Fld jury & witness list. MO
	16.	Supplemental exhibits in support of pltf's motn for prelim inj. PLTFS
12-16-83	17.	ORD re prelim inj, pltfs; motn granted & as further stated.
12-20-83	18.	Appl for stay of prelim inj pending appeal. Defendant
12-21-83	19.	ORD denying appl for stay.
1-4-84	20.	Fld defts' NOTC OF APPEAL to 9th Cir. C/A frm Ord dtd 12-16-83.
1-12-84	21.	Ex parte appl & ORD extg ti to file prop findings. Plaintiff
1-17-84	22.	Trans desig.
1-30-84		LODGED pltfs prop findings.
2-2-84	23.	Defts' objections ot [sic] prop findngs of fact & conclusions of law.
2-6-84	24.	Stip & ORD to ext ti to resp to 1st a/c to 2-13-84.
1/30/84	—	Fld orig of reptr's transc of prcdgs had on 12/16/83. Vol. 2. 12/ 6/83 [sic] Vol. 1.
2-13-84	25.	MO: Crt request pltf to submn prop findngs by 2-27-84.

DATE	NR.	PROCEEDINGS
2-21-84	26.	Notc & motn to dismisd compln; memo of p's & a's; 3-19-84, 9:30am. defts
3/6/84	27.	Appellants' designatn of Clerk's recrd on appeal. Deft
3-9-84	28.	Defts' objections to 2nd set of prop findngs of fact. defts
3-19-84	29.	Notc & motn for class certification, 4-16-84, 9:30am. pltfs.
		LODGED findngs & concl.
	30.	Memo of p's & a's in suppt of motn for class certification.
3/20/84	31.	Hrng on deft's Motn to dism & Hrng for pltf's Motn for class cert 4/16/84 at 10a.m. Oppos to motn fld 4/4/84 & reply due 4/11/84.
4-4-84	32.	Defts' oppos to pltfs motn for class cert.
*3/28/84	33.	Fld appellee/pltfs desig of clk's recd (CA 84-5504).
*3/8/84		LODGED cc frm USCA denying mot for partial stay pending appeal.
4/9/84	34.	Fld pltf's Oppos to deft's Mot to Dismiss 4/16/84 10am.
4/17/84	35.	MO: (DVK) On 3/19/84, pltfs fld fr the second ti proposd fndngs of fact & concl of law pursuant to crt's request as orig fndngs & concl were not acceptable. Crt hereby requests, for the final ti, that plts file proper findngs of fact & & [sic] concl by 4/27/84. Crt requests that pltfs prep third set of fndngs & concl in conformity w/Crt's Ord grntng prelim inj. Pltfs are to delete all arguments not addressed by Crt in its ord.

DATE	NR.	PROCEEDINGS
5/10/84	36.	Deft's reply to pltf's resp to deft's motn to dismiss.
5/11/84	37.	Pltf's reply to deft's opos to Motn for class certification.
5/14/84		—LODGED pltf's proposed findings of fact & conc of law (3rd set).
5/14/84	38.	MO: (Kn) Crt takes motn of deft's to disms comp & Pltf's motn fr class certicatn Under submisn.
5/14/84	39.	Notc of pltf's cnsl re new address.
5/17/84	40.	Deft's objctns to the 3rd set of propsd findings of fact & concl of law.
5/18/84	41.	Deft's resp to citations.
5/30/84		—Issd & fwd to C/A 1 cc of clk's recd o-n appeal along w/ reptr's transc of procdngs had on 12/6/83; 12/16/83; and one env containing exh.
7-3-84	41.	ORD DEN deft's mot to dism; pltf's mot fr class cert DEN w/o prej
9-4-84	42.	ANS TO 1ST A/C defts
9-5-84	43.	EX PARTE applic & ORD allowng defts to flg memo of P & A in excess of 35 pgs
9-7-84	44.	Notc & mot fr S/J 10-1-84 @ 9:30 AM defts
		LODGED STMT UNCON FACT & concl of law
		LODGED prop S/J
10-2-84	45.	Applic fr cont of hrg dte of deft's mot to dism & ORD cont hrg to 11-19-84 @ 9:30 AM pltf
11-15-84	46.	EX PARTE applic & ORD cont hrg on deft's mot fr S/J to 12-10-84 @ 9:30 AM pltf

DATE	NR.	PROCEEDINGS
11-20-84	47.	Opp to mot fr S/J pltf
12-5-84	48.	Pltf's renewd mot fr class cert; notc of mot 1-14-85 @ 9:30AM
12-5-84	49.	Pltf's ex parte applic fr cont of deft's mot fr S/J DEN
12-6-84	50.	Pltf's stmt of gen issues
12-10-84	51.	Crrctn to defts' resp to pltfs' stmt of genu issus
12-7-84	52.	Defts' reply memo
12-10-84	53.	Defts' resp to pltfs' stmt of genu issus
12-11-84	54.	Crt ORD tks mtn und subm MO
12-19-84	55.	Stip & ORD tht defts' resp to pltfs' renewd mot fr class cert may be fld by 1-4-85 defts
1-4-85	56.	Opp to pltf renewed mot fr class cert defts
2-20-85	57.	Pltfs' reply to defts' opp to pltfs' renewed mot fr class cert 2-25-85 @ 9:30 AM
3/7/85	58.	ORDER that Summary Judgment is granted in favor of the plaintiffs. (ENT 3/7/85) Mld cpys & Notc to ptys.
3-27-85	59.	MIN ORD: Crt intends to close this case; if eithr pty objcts such objects be submittd by 4-8-85
4-8-85	60.	Pltf's objs to closing of case
4-9-85	61.	Defts resp to pltfs prop findings of fact & conditions of [sic] law.
4-9-85	62.	Exh in suppt of Pltfs objections to closing of case. PLtf.
5/2/85	63.	Deft's NOTC OF APPEAL to 9th Cir. C/A frm ord ent 3/7/85.

DATE	NR.	PROCEEDINGS
5-6-85	64.	Notc of hrg on flg & spreading jgmnt USCA on 5-20-85 @ 9:30 AM
4/30/85		LODGED cc ord frm 9th CCA affirmng in part, revrsng & remdnging in part jdmt of DC.
5/20/85	65.	MO; CRT GRTS pltf's mot for class cert-fctn; pltf to prep ord by 5/25/*5 [sic].
5-24-85		LDOGED [sic] prop ord granting class certif-pltf
*5-20-85	66.	MIN ORD: Crt ORD mandate frm USCA affirm in part & reversing in part be fld & spread on min of USDC (ENT 5-28-85)
*4/30/85	67.	MO: Crt considers pltfs' objtns to closing of case, Ords pltfs' motn fr class certification shall be hrd 5/20/84 [sic], etc.
7/1/85	68.	Findings of Fact & Conclusion of Law (ENT 7/3/85) Mld copys/notcs
7/9/85	69.	ORD that Pltf motn for class certifictn is GRANTED; & case shall be closed upon final judgmnt being entered in favor of pltfs. Crt finds no need to stary [sic] proceedings as to other causes of actn in case; Crt hereby enters S/J to pltfs & closes case. (ENT 7/12/85) Mld copys/notcs. MD-JS-6
7/23/85	70.	Deft INS' NOTC OF APPEAL to 9th Cir. C/A frm ord ent 7/12/85.
8/7/85	71.	Memo in suppt of applictn for atty fees & costs; declrs & exhibits, 9/30/85, 9:30 am Pltf
	72.	Notc of motn for atty fees/costs, 9/30/85, 9:30 am Pltf
8/16/85		Transcript designt & Ordering Form

DATE	NR.	PROCEEDINGS
8/19/85	73.	Notc of motn to stay pltf motn for atty fees/costs; Memo of P/A Defts
8/16/85	74.	Trancpt desgntn & Ord Form
9/9/85	75.	On cts own motion, pltfs motion for fees & costs has been cont 10/7/85 9:30 am for further hearing
9/10/85	76.	Reply to pltfs opp to defts motion for stay. defts.
9/13/85	77.	LODGED cc ord fm 9th CCA exemptg case fm prebrief conf program
9/18/85	78.	Pltf's suppl decl in opp stn to dft's mtn to stay pltf's mtn for atty's fees & costs. Declrtn of Rev. Mark Valdes
9-23-85	79.	Pltfs Ex Parte applctn to file a suppl declrtn in opp to dft's mtn to stay pltf's mtn for atty's fees & costs, and memo & declrtn in supp therof
9-23-85	80.	ORD allowing pltfs to file a supplmntl dclrtn in opp. to pltf's mtn for attys' fees & costs.
10-2-85	81.	Stip & ORD that pltfs' mtn for atty's fees is w/d & may be resubmitted after the appellate process in this case is completed. 10-7-85 hrg date is therefore cancelled.
10-25-85	82.	Amded transcript desig & ordering form
11-4-85	83.	Appellants' desig of clerk's record on appeal.
11-22-85	84.	fild [sic] rptr's transc of proceeds for 12-6 & 16, 1983.
12-23-85		LODGED Ord appellees' mtn for ext of ti is Granted to 12-16-85.
*12-18-85	85.	Appellees' desig of Clerk's record on appeal.

DATE	NR.	PROCEEDINGS
2-7-86		LODGED Ord frm 9th Cir Crt of Appeals that appelt's mtn of ext of ti is grntd. Reply shall be fieled [sic] by 1-21-86.
2-19-86	86.	Fwd to 9th Cir C/A Org Reptrs trans of procdngs had 12-06-83 & 12-16-83
11-25-85		LODGED ord frm AP/ re applInt's motn of 10/10/85 for an ext of ti to 10/30/85 in which to file opening brief is granted.
7-11-86	87.	Notc. of mtn & mtn for affy [sic] fees, 9-22-86 at 9:30 a.m. pltf
		LODGED prop ord
	88.	Memo of P&A's. pltf
8-15-86	89.	Stip & ORD mot for atty's fees cont until 60 days after appellate process complt, matter cont to 12-1-86.
10-6-86		LODGED ORD from US 9th Cir C/A.
10-14-86	90.	MO: Flg & spreading mandate of the 9th C/A affirming the judgmnt. (ENT 10-17-86)
11-21-86	91.	STIP & ORD that mot for atty's fees cont to 1-26-87 @9:30am.
1-15-87	92.	STIP & ORD that mot for atty's fees will be taken off calendar.
6-8-87	93.	CRT ORD that mandate of 9th CCA remandg is fld & spread upon minutes of USDC. MO N/R (ENT 6-10-87).
7-7-87	94.	Crt asks ptys brief followg, what effect does the Immigration Reform & Control Act have on matter? & ptys should limit briefs to 20 pages & should fl it NLT 7-28-87 MO N/R

DATE	NR.	PROCEEDINGS
7-27-87	95.	Stip & ord—briefing due 7-28-87 now cont to 8-28-87
8-28-87	96.	Memo of P's & A's re immigration reform & control act of 1986. pltfs.
	97.	brief on remand of case. defts.
11-3-87		LODGED cc of ord from 9th CCA remanded jdmnt of dist crt.
12-31-87	98.	ORD that IRCA does not alter crt's earlier rulg, crt finds that S/J in favor of pltfs is warranted. (ENT 1-6-88) mld copies to ptys.
2/25/88	99.	DEFT'S NOTC OF APPEAL TO 9th CIR. C/A FRM ORD ENT 01/06/88. FEES WAIVED.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 88-5774

D.C. No. 83-7927-KN

NATIONAL CENTER FOR IMMIGRANTS' RIGHTS, INC., ET AL., PLAINTIFFS-APPELLEES

v.

IMMIGRATION & NATURALIZATION SERVICE, ET AL., DEFENDANTS-APPELLANTS

Appeal from the United States District Court
for the Central District of California
David V. Kenyon, District Judge, Presiding

DOCKET ENTRIES

DATE	PROCEEDINGS
3/4/88	DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. Sent appellant(s) civil appeals docketing statement. (lu)
3/22/88	Filed as of 3/21/88 appellant's Civil Appeals Docketing Statement served on 3/18/88 (to CONFATT) [88-5774] (ru)
3/23/88	Filed notice of appearance of Barbara L. Herwig and John F. Daly as cnsl for aplts. [88-5774] (ec)
4/28/88	FILED CERTIFICATE OF RECORD; RT FILED IN DC N/T. [88-5774] [88-5774] [sic] (rc)
7/15/88	Referred to CONFATT re: briefing schedule. [88-5774] (jlc)

DATE	PROCEEDINGS
9/27/88	Filed order CONFATT (HAH) releasing case from CONFATT and setting briefing schedule. appellant's brief, excerpts due 11/7/88 for Alan Nelson, for INS [88-5774] (jw)
11/7/88	Filed motion of Appellant extend time to file appellant's opening brief and deputy clerk order: (Deputy Clerk: wqm) granting motion to extend time to file appellant's opening brief. The opening brief and excerpts of record are due November 28, 1988. Further briefing will be governed by FRAP 31(a). [412670-1] [88-5774] (jw)
11/25/88	Filed motion of Appellant extend time to file appellant's opening brief and deputy clerk order: (Deputy Clerk: wqm) granting motion to extend time to file appellant's opening brief. The opening brief and excerpts of record are due December 8, 1988. Aples' brief and aplts' reply brief shall be filed in accordance with the time limits set forth in FRAP 31(a). No further extension of time in which to file this brief will be entertained by this court. [1478414-1] [88-5774] (jw)
12/15/88	Filed original and 15 copies Appellant INS, Appellant Alan Nelson opening brief 50 pages, and five excerpts of record in 1 volumes [sic]; served on 12/8/88 [88-5774] (jlc)
1/19/89	Filed motion of Appellee extend time to file appellee's brief and deputy clerk order: (Deputy Clerk: ahh) granting motion to extend time to file appellee's brief. The answering brief is due February 9, 1989. The optional reply brief is due February 23, 1989. [1553746-1] appellees' brief due 2/9/89 for NCIR, for American Friends Com, for El Rescate, for United Automobile, for CARC, for El Concilio Manzo, for Willamette Valley; appellants' reply brief due 2/23/89 for Alan Nelson, for INS; [88-5774] (jw)

DATE	PROCEEDINGS
2/10/89	Filed motion of Appellee extend time to file appellee's brief and deputy clerk order: (Deputy Clerk: ahh) Aples' motion for an extension of time in which to file answering brief is granted. [1563498-1] appellees' [sic] brief due 2/21/89 for NCIR, for American Friends Com, for El Rescate, for United Automobile, for CARC, for El Concilio Manzo, for Willamette Valley; appellants' reply brief due 3/7/89 for Alan Nelson, for INS; (Motion recvd 02/07/89) [88-5774] (jw)
2/24/89	Filed original and 15 copies appellees' 49 pages brief, served on 2/21/78 [88-5774] (jw)
2/27/89	Filed International Human Rights Law Group's motion to become amicus curiae, (PROMO); served on 2/21/89 [1570673] [88-5774] (jw)
2/28/89	Received International Human Rights Law Group's orig brief in 15 copies of 11 pages; deficient: mtn. pending; served on 2/21/89 Notified counsel. [88-5774] (jw)
3/10/89	Filed Appelalnt INS's motion to extend time to file reply brief (PROMO) [88-5774] served on 3/1/89 [1575621] [88-5774] (jw)
3/13/89	Filed order (NOONAN): The motion of the International Human Rights Law Group to file a brief as amicus curiae in support of aples is granted. The brief received February 28, 1989, shall be filed March 22, 1989. Aplts' motion for an extension of time in which to file the reply brief is granted. the [sic] reply brief is due March 22, 1989. [1570673-1] [1575621-1] appellants' [sic] reply brief due 3/22/89 for Alan Nelson, for INS; [88-5774] (jw)
3/13/89	Filed original and 11 copies amicus curiae (INTERNATIONAL HUMAN RIGHTS LAW GROUP) brief of 11 pages; served on 2/21/89, previously received. [88-5774] (jw)

DATE	PROCEEDINGS
3/16/89	INVENTORIED [88-5774] (mm)
3/24/89	Filed motion of Appellant extend time to file reply brief and deputy clerk order: (Deputy Clerk: ahh) granting motion to extend time to file reply brief. The reply brief is due March 28, 1989. [1581544-1] appellants' [sic] reply brief due 3/28/89 for Alan Nelson, for INS; (Motion recvd 3/21/89) [88-5774] (jw)
3/29/89	Filed original and 15 copies INS, Alan Nelson reply brief, 25 pages, served on 3/28/89 [88-5774] (jw)
6/15/89	Filed order (Deputy Clerk: dd) Judge Trott has been drawn to replace Judge Wright on this case. The panel is now circuit Judges Ferguson, Reinhardt, and Trott. [88-5774] (jw)
8/8/89	CALENDARED: Pasadena 9/19/89 1:00 p.m. Courtroom 1 [88-5774] (dd)
9/19/89	ARGUED AND SUBMITTED TO: FERGUSON, REINHARDT, TROTT [88-5774] (lu)
10/6/89	Received letter from Barbara L. Herwig, Esq. & John F. Daly, Esq. dated 10/5/89 re: wording of certain bond conditions, (PANEL) [88-5774] (jw)
11/9/89	Filed aple's letter dtd 10/24/89 re: question from Judge Trott w/suggestion re: lack of jurisdiction and appropriateness of dismissal and supporting memorandum of law. (Panel) (10/24) [88-5774] (dmd)
11/27/89	Received aplt's response to aples' suggestion of lack of jurisdiction. (11/24) (PANEL) [88-5774] (jlc)
12/21/89	Filed per curiam opinion (Judges FERGUSON, REINHARDT, TROTT) The suggestion raised by aples of want of jurisdiction and appropriateness of dismissal is hereby rejected. [88-5774] (jlc)

DATE	PROCEEDINGS
1/5/90	Corrected reprint 1/5/90 removing the argued and submitted date from the 12/21/89 opinion. [88-5774] (dt)
5/23/90	Received letter from John f. [sic] Daly, Esq. dated 5/18/90 re: change in phone numbers for John Daly, Esq. (FTS 368-2541/(202) 514-2541) and Barbara L. Herwig, Esq. (FTS 368-5425/(202) 514-5425) [88-5774] (jw)
6/27/90	Received letter from John F. Daly, Esq. dated 6/19/90 re: additional citations, (PANEL) [88-5774] (jw)
7/6/90	Received letter from John F. Daly, Esq. dated 7/2/90 re: additional citations, (PANEL) [88-5774] (jw)
9/7/90	FILED OPINION: AFFIRMED (Terminated on the Merits after Oral Hearing; Affirmed; Written, Signed, Published. FERGUSON, author; REINHARDT; TROTT, dissenting.) FILED AND ENTERED JUDGMENT. [88-5774] (dmd)
9/25/90	Filed Appellant INS, Appellant Alan Nelson's motion for leave to file out of time a motion for extension of time within which to file petition for rehearing. (PANEL w/motion for extension of time to file petition for rehearing) [88-5774] served on 9/24/90 [1817604] [88-5774] (jw)
10/1/90	Filed aples' response in opposition to appellant's motion for leave to file late petition for rehearing, (PANEL) [1817604-1] served on 9/26/90 [88-5774] (jw)
10/12/90	[1824662] Received original and 40 copies Appellant INS, Appellees' petition, for rehearing with suggestion for rehearing en banc. (motion [sic] for leave to file out of time a motion for extension of time to file petition for rehearing is pending) (shelf) served on 10/11/90. Notified counsel. (jw)

DATE	PROCEEDINGS
10/25/90	Filed order (FERGUSON, REINHARDT, TROTT): The motion for leave to file out of time a motion for extension of time within which to file Petition for Rehearing is denied. [88-5774] (jw)
11/6/90	MANDATE ISSUED [88-5774] (jw)
11/29/90	Received letter from U.S. Supreme Court dated 11/23/90 re: "The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice O'Connor, who on November 23, 1990, signed an order extending the time to and including January 5, 1991. [88-5774] (jw)
12/12/90	Received letter from Peter A. Schey, Esq. dated 12/5/90 re: notice of change of address. [88-5774] (jw)
12/28/90	Filed NCIR motion for transfer of consideration of attorneys' fees application, (PANEL) served on 12/23/90. [88-5774] served [sic] on 12/23/90 [1860554] (jw)
1/15/91	Received notice from Supreme Court: petition for certiorari filed Supreme Court No. 90-1090 filed on 1/7/91. [88-5774] (jw)
2/14/91	Filed order (FERGUSON, REINHARDT, TROTT): Plaintiffs/Aples' motion for transfer of Consideration of Attorneys' fees application is granted. [1860554-1] [88-5774] (jw)

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

Case No. 83 7927 Kn (JRx)

NATIONAL CENTER FOR IMMIGRANTS [sic] RIGHTS, INC.; AMERICAN FRIENDS SERVICE COMMITTEE; EL RESCATE ("THE RESCUE"); UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, LOCAL 645; CENTRAL AMERICAN REFUGEE CENTER (CARECEN); EL CONCILIO MANZO; WILLAMETTE VALLEY IMMIGRATION PROJECT;) [sic] THE SOUTHERN CALIFORNIA ECUMENICAL COUNCIL; CENTRO PRESENTE, INC.; TUCSON ECUMENICAL COUNCIL; HERMANDAD NACIONAL MEXICANA; COALITION FOR VISAS AND RIGHTS FOR THE UNDOCUMENTED; CENTRO PARA IMMIGRANTES DE HOUSTON; INTERNATIONAL INSTITUTE OF BOSTON CENTER FOR IMMIGRANTS RIGHTS, SANTOS DURAN; JULIO FERNANDO LORINE-GARCIA; JOSE SALAZAR GUARDADO; RAPHAEL ANTONIO PEREZ; RAUL ARMANDO MARROQUIN; RICARDO OSEGUEDA IMPERIAL VALLEY IMMIGRATION PROJECT; PLAINTIFFS

v.

IMMIGRATION AND NATURALIZATION SERVICE; ALAN NELSON, COMMISSIONER OF THE IMMIGRATION AND NATURALIZATION SERVICE; ATTORNEY GENERAL WILLIAM FRENCH SMITH, DEFENDANTS

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF (CLASS ACTION)

[Filed Dec. 6, 1983]

I

INTRODUCTION

1. This complaint challenges the implementation of a national regulation by the defendant Immigration and Naturalization Service ("INS") which becomes effective on December 7, 1983, and requires "the imposition of bond conditions against employment in the case of aliens who are placed in exclusion or deportation proceedings" by the agency. Federal Register, Vol. 48, No. 216, pages 51142-44 (November 7, 1983); 8 C.F.R. Sections 103.6 and 109.1 (1983). Placement of this condition on release from detention is automatic regardless of its relevance to ensuring the presence of the respondent at future administrative proceedings.

2. Holding that under the Immigration and Nationality Act, Section 242, 8 U.S.C. Section 1252, "there does not appear to be any reason . . . to limit conditions of release" of aliens, 48 Fed. Reg. p. 51142, and recognizing that under the regulation "more aliens might have to be detained," *Id.*, at 51143, the INS justifies the new restriction solely as a reasonable measure for the "safeguarding of employment of U.S. citizens . . ." *Ibid.*

3. The new regulation removes the power of administrative Immigration Judges to set the conditions of bond of persons in deportation and exclusion proceedings over which the Immigration Judges preside. 8 C.F.R. Section 242.2. While the Immigration Judges are entirely independent of the INS, Federal Register, Vol. 48, No. 39, pages 8039-40 (February 25, 1983), 8 C.F.R. Section 3 (1983), coming under the jurisdiction of the Executive Office for Immigration Review, *Ibid.*, the regulation challenged herein, which significantly reduces the power of the Immigration Judges, was only proposed and made final under order of the INS Commissioner.

4. Under the new regulation a person released from detention by defendants may obtain "work authorization" only upon a showing of "compelling reasons." 8 C.F.R.

Section 103.6(a)(iii). The regulation does not provide for a due process hearing of any type, does not describe what type of form shall be used to make an application, and provides *no* time limits within which a request for work authorization must be responded to. *Ibid.* No appeal lies from the denial of an application for work authorization. *Ibid.*

5. As is more fully set forth below, plaintiffs allege that the challenged regulation is without statutory authority, is not reasonably related to the agency's statutory power to release persons on bond in a manner designed to ensure their presence at future proceedings, was promulgated unlawfully in that the INS Commissioner is without power to remove matters over which the independent Immigration Judges have jurisdiction, violates the due process clause of the Fifth Amendment in that no hearing is provided for before work authorization can be denied, and violates the Fifth Amendment's equal protection guarantee in that only indigent persons will be severely injured by the challenged regulation.

II

Jurisdiction and Declaratory Judgment

6. Jurisdiction for this action is had pursuant to 28 U.S.C. § 1331 (federal question jurisdiction); 28 U.S.C. § 1361 (mandamus jurisdiction): 8 U.S.C. § 1324 (federal district court jurisdiction for disputes arising under the Immigration Act).

7. Declaratory judgment is sought pursuant to 28 U.S.C. § 2202.

III

Parties

8. The National Center for Immigrants [sic] Rights, Inc., is a non-profit, tax-exempt corporation dedicated to the protection and promotion of the rights of immigrants and refugees residing in the United States. Located in

Los Angeles, California, NCIR, Inc., represents indigent immigrants and refugees in proceedings before INS throughout the United States. NCIR, Inc. is a membership organization. It has many clients and members who will be irreparably injured unless implementation of the challenged regulation is enjoined.

9. The American Freinds [sic] Service Committee is a non-profit, tax-exempt corporation dedicated, *inter alia*, to the protection and promotion of the rights of immigrants and refugees residing in the United States. With offices throughout the United States, the AFSC represents indigent immigrants and refugees in proceedings before INS. AFSC is a membership organization. It has approximately 350 clients and members (including about 80 presently in INS detention) who will be irreparably injured unless implementation of the challenged regulation is enjoined.

10. El Rescate ("The Rescue") is a non-profit organization based in Los Angeles, California, which provides legal assistance to low-income immigrants and refugees. El Rescate is a membership organization. It has many clients and members who will be irreparably injured unless implementation of the challenged regulation is enjoined.

11. Plaintiff the UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, LOCAL 645, is a duly composed union in the United States with many immigrant and refugee members currently employed in this country and under contracts protected by the National Labor Relations Act and the National Labor Relations Board. Authoritative decisions issued by the National Labor Relations Board and various federal Courts of Appeal have held that undocumented immigrants and refugees are entitled to work in the United States and are eligible for the statutory protections of the National Labor Relations Act. The plaintiff union's members will be directly and unlawfully impacted by implementation of the INS regulations chal-

lenged herein. Duly authorized union members will be prohibited from working, including undocumented immigrant members who have recently won decisions from the National Labor Relations Board providing that they are entitled to work in the United States.

12. CARECEN is a non-profit, tax-exempt corporation based in Washington, D.C., which provides free legal assistance to low-income immigrants and refugees. CARECEN is a membership organization. It has many clients and members who will be irreparably injured unless implementation of the challenged regulation is enjoined.

13. The WILLAMETTE VALLEY IMMIGRATION PROJECT is a non-profit, tax-exempt corporation based in Oregon, which provides free legal assistance to low-income immigrants and refugees. The Willamette Valley Immigration Project is a membership organization. It has many clients and members who will be irreparably injured unless implementation of the challenged regulation is enjoined.

14. The EL CONCILIO MANZA is a non-profit, tax-exempt corporation based in Tucson, Arizona, which provides free legal assistance to low-income immigrants and refugees. The El Concilio Manzo is a membership organization. It has many clients and members who will be irreparably injured unless implementation of the challenged regulation is enjoined.

15. CENTRO PRESENTE is a non-profit, tax-exempt corporation based in Cambridge, Massachusetts, which provides free legal assistance to low-income immigrants and refugees. The Centro Presente is a membership organization. It has many clients and members who will be irreparably injured unless implementation of the challenged regulation is enjoined.

16. The SOUTHERN CALIFORNIA ECUMENICAL COUNCIL is a non-profit, tax-exempt corporation based in Los Angeles, California, which, *inter alia*, provides free legal assistance to low-income immigrants and refugees

through a project called EPIC. The Southern California Ecumenical Council has many clients and members who will be irreparably injured unless implementation of the challenged regulation is enjoined.

17. The TUCSON ECUMENICAL COUNCIL is a non-profit, tax-exempt corporation based in Tucson, Arizona, which, *inter alia*, provides free legal assistance to low-income immigrants and refugees through a project called EPIC. The Southern California Ecumenical Council [sic] has many clients and members who will be irreparably injured unless implementation of the challenged regulation is enjoined.

18. The CENTRO PARA IMMIGRANTES DE HOUSTON is a non-profit, tax-exempt corporation based in Houston, Texas, which provides free legal assistance to low-income immigrants and refugees. The Centro is a membership organization. It has many clients and members who will be irreparably injured unless implementation of the challenged regulation is enjoined.

19. The INTERNATIONAL INSTITUTE OF BOSTON is a non-profit, tax-exempt corporation based in Boston, Massachusetts, which provides free legal assistance to low-income immigrants and refugees. The Institute is a membership organization. It has many clients and members who will be irreparably injured unless implementation of the challenged regulation is enjoined.

20. The CENTER FOR IMMIGRANTS RIGHTS is a non-profit organization based in New York City, New York, which provides free legal assistance to low-income immigrants and refugees. The Center is a membership organization. It has many clients and members who will be irreparably injured unless implementation of the challenged regulation is enjoined.

21. The IMPERIAL VALLEY IMMIGRATION PROJECT is a non-profit organization based in El Centro, California, which provides free legal assistance to low-income immigrants and refugees in INS detention at the INS detention facility in El Centro, California. It

has many clients and members who will be irreparably injured unless implementation of the challenged regulation is enjoined.

22. Jose Salazar Guardado (A27 188 642), Santos Adalberto Lopez-Duran (A26 408 989), Julio Fernando Lorine-Garcia (A26 408 989), Rafael Antonio Perez (A26 967 632), Raul Armando Marroquin (A26 967 801), and Ricardo Delgado Oseguena (A24 267 349) are indigent immigrants held in detention by INS. On and after December 7, 1983, these plaintiffs' ability to win their release from detention will be almost non-existent because of the "no work" condition which will be placed on all bonds. These plaintiffs are also without the financial means to support themselves without the ability to be employment [sic]. Under the guidelines established in defendants' challenged regulation, the plaintiffs cannot establish a "compelling reason" to be employed (other than the need to eat, etc.) while INS processes their pending applications for benefits which might entitle them to lawfully remain in the United States. Like all other immigrants and refugees with applications for benefits pending before the Immigration Service, these plaintiffs need to be employed so that they can obtain the bare necessities of life (food, clothing, shelter, medical services, etc.) while INS adjudicates their applications for benefits, a matter which might take more than one year. Many of these plaintiffs also have children to support.

23. JANE DOE I is an immigrant who is currently in the process of preparing various applications for immigration statutory benefits and who intended to surrender to the INS and apply for such benefits in the coming weeks. Until December 7, 1983, this plaintiff could have surrendered to the INS to apply for benefits knowing that she would likely be released from detention under bond within a matter of hours or days. This plaintiff will not surrender to INS to seek statutory benefits on or after December 7, 1983, because she has become aware of the challenged regulation and is afraid that she will never win release from detention if she surrenders to INS once the challenged regulation is implemented.

24. Defendant the IMMIGRATION AND NATURALIZATION SERVICE is an agency of the Department of Justice and is responsible for implementing the Immigration and Nationality Act, 8 U.S.C. Sections 1101, *et seq.*

25. Defendant Alan Nelson is the duly appointed Commissioner of the INS and was the person responsible for the promulgation of the challenged regulation.

26. Defendant WILLIAM FRENCH SMITH is the Attorney General of the United States and is statutorily responsible for implementation of the Immigration and Nationality Act. 8 U.S.C. Section 1103.

IV

CLASS ACTION

27. Pursuant to Rule 23(a) and (b)(2), plaintiffs seek to have this case certified as a class action on behalf of all persons whose release from INS detention on or after December 7, 1983, will be conditioned by the no employment restriction found in the challenged regulations, 8 C.F.R. Sections 103.6 and 109.1.

28. Defendants' challenged regulation is or will be applied in a uniform manner to all persons in INS detention on or after December 7, 1983, and the issues of law and fact raised by plaintiffs and their proposed class members are identical. The number of class members is in the thousands and is too large to feasibly join in this action.

V

FIRST CAUSE OF ACTION

27. Plaintiffs incorporate herein by reference all proceeding [sic] paragraphs.

28. The INS has the statutory authority to arrest and detain persons reasonably believed to be aliens unlawfully present in the country. 8 U.S.C. Section 1252(a). The

Attorney General has the statutory discretion and due process obligation to release persons "under bond . . . containing such conditions as the Attorney General may prescribe . . ." *Ibid.*; 8 C.F.R. Section 242.2.

29. 8 C.F.R. Sections 103.6 and 109.1 (1983) are without statutory authority in that the broad prohibition against employment contained in these regulations is not reasonably related to ensuring the respondent's presence at future administrative hearings. Nor is the employment restriction reasonably related to any other legitimate governmental interest justifying the imposition of the restriction. The challenged regulations are arbitrary, capricious and an abuse of discretion.

VI

SECOND CAUSE OF ACTION

30. Plaintiffs incorporate herein by reference all proceeding [sic] paragraphs.

31. The INS Commissioner is without statutory authority to promulgate a final regulation which removes jurisdiction from the independent Immigration Judges on bond matters and places authority for such matters in the hands of INS employees of the Commissioner. Since February 1983 the Special Inquiry Officers have no longer been under the jurisdiction of the INS Commissioner, and now are directed in "the execution of their duties" by the "newly created" Executive Office of Immigration Review. Federal Register, Vol. 48, No. 39 (February 25, 1983) pages 8039 (amending 8 C.F.R. Section 3) and 8057 (amending 28 C.F.R. Section 0.19). 8 C.F.R. Section 3 (1983) and 28 C.F.R. Section 0.105 (1983) clearly withdrew the INS Commissioner's authority over Special Inquiry Officers. The Attorney General has only delegated to the INS Commissioner certain administrative functions, "except the authority delegated to the Executive Office for Immigration Review . . . [and] Special Inquiry Officers." 8 C.F.R. Section 100.2 (amended 1983)

(Federal Register, Vol. 48, No. 39, page 8040. [sic] The INS Commissioner's final regulation is unlawful and void.

VII

THIRD CAUSE OF ACTION

32. Plaintiffs incorporate by reference all proceeding [sic] paragraphs.

33. The employment prohibition contained in 8 C.F.R. Sections 103.6 and 109.1 violate [sic] the due process clause of the Fifth Amendment in that they [sic] seek to completely and totally restrict the exercise of an important liberty without the opportunity for notice and hearing and a due process proceeding of record.

VIII

FOURTH CAUSE OF ACTION

34. Plaintiffs incorporate by reference all proceeding [sic] paragraphs.

35. The employment prohibition contained in 8 C.F.R. Sections 103.6 and 109.1 violate [sic] the equal protection guarantee of the Fifth Amendment in that the loss of the right to be employed imposed by the regulations remains in effect for as long as the INS takes to process the immigrant or refugee's pending application(s) and, without regard to any difference in their circumstance concerning their likelihood of appearing in future administrative proceedings, adversely affects indigent people while not affecting similarly situated persons with financial resources.

IX

FIFTH CAUSE OF ACTION

36. Plaintiffs incorporate by reference all proceeding [sic] paragraphs.

37. Defendants' challenged regulation is inconsistent with and is superceded by federal laws which allow all

immigrants and refugees (other than those present in the country with non-immigrant visas) to be employed and to be eligible for the benefits of protective labor legislation. 29 U.S.C. Sections 141, *et seq.* (National Labor Relations Act); 29 U.S.C. 201-219 (Fair Labor Standards Act); 29 U.S.C. Section 651, *et seq.* (Occupational Safety and Health Act).

X

SIXTH CAUSE OF ACTION

38. Plaintiffs incorporate by reference all proceeding [sic] paragraphs.

39. Defendants have unlawfully failed to establish uniform standards and procedures to implement "work authorization" policies under existing policies and regulations (including 8 C.F.R. Sections 109.1(b)(2), 208.4), and have arbitrarily and capriciously denied work authorization, or failed to respond to requests for work authorization, without compliance with substantive or procedural Fifth Amendment due process and in a manner contrary to law.

XI

IRREPARABLE INJURY

40. Plaintiffs and the members and clients of the plaintiff organizations will suffer irreparable injury unless an injunction is issued prohibiting enforcement of the unlawful INS regulations challenged herein. This injury will include, *inter alia*, the inability of persons to bond out of detention pending lengthy administrative proceedings without regard to their likelihood to appear at future hearings, the forced abandonment of applications and petitions for important statutory benefits for lawful status due to indefinite detentions and the release of persons without affording them the opportunity to obtain the basic necessities of life, and the separation of families through unnecessary detentions.

XII

PRAYER FOR RELIEF

Wherefore, plaintiffs pray that this Court:

1. Assert jurisdiction over this complaint;

2. Issue a temporary restraining order prohibiting implementation of 8 C.F.R. Sections 103.6(a)(2)(ii)-(iii) and 109.1(b)(8);

3. Issue a preliminary injunction prohibiting implementation of 8 C.F.R. Sections 103.6(a)(2)(ii)-(iii) and 109.1(b)(8);

4. Issue a permanent injunction prohibiting implementation of 8 C.F.R. Sections 103.6(a)(2)(ii)-(iii) and 109.1(b)(8);

5. Issue a declaratory judgment providing that 8 C.F.R. Sections 103.6(a)(2)(ii)-(iii) and 109.1(b)(8) are without statutory authority, bear no reasonable relationship to respondents' future appearances at deportation proceedings, bear no relationship to any other legitimate government interest, violate the due process clause and the equal protection guarantee of the Fifth Amendment, and were promulgated in an unlawful manner in that the INS Commissioner has no jurisdiction over the Special Inquiry Officers;

6. Grant plaintiffs reasonable costs and attorneys fees;

7. Grant such further relief as the Court may deem just and proper.

DATED: December 5, 1983

By: /s/ Peter A. Schey
PETER A. SCHEY
Counsel of Record for Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

Date: Dec. 16, 1983

Time 10:30 a.m.

Case No. CV 83-7927-KN (JRx)

NATIONAL CENTER FOR IMMIGRANTS [sic] RIGHTS, INC.; AMERICAN FRIENDS SERVICE COMMITTEE; EL RESCATE ("THE RESCUE"); UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, LOCAL 645; CENTRAL AMERICAN REFUGEE CENTER (CARECEN); EL CONCILIO MANZO; WILLAMETTE VALLEY IMMIGRATION PROJECT;) [sic] THE SOUTHERN CALIFORNIA ECUMENICAL COUNCIL; CENTRO PRESENTE, INC.; TUCSON ECUMENICAL COUNCIL; HERMANDAD NACIONAL MEXICANA; COALITION FOR VISAS AND RIGHTS FOR THE UNDOCUMENTED; CENTRO PARA IMMIGRANTES DE HOUSTON; INTERNATIONAL INSTITUTE OF BOSTON CENTER FOR IMMIGRANTS RIGHTS, SANTOS DURAN; JULIO FERNANDO LORINE-GARCIA; RAPHAEL ANTONIO PEREZ; RAUL ARMANDO MARROQUIN; RICARDO DELGADO OSEGUEDA; MIRZA ODILIA HERNANDEZ DIAZ; MAXIMILIANO MARTINEZ ORIANA; ROSA MARIA TOVAR RIVAS; DENNIS GILLERMO VANEGAS; ANTONIO MENDOZA ROMERO; MIGEL ANGEL GOMEZ VASQUEZ; FIDEL ANGEL HENRIQUEZ DURAN; DANIEL ANTONIO GARCIA REYES; ANA BERTA MARTINEZ; DIONISIO NAVARETTE MARLOS; JANE DOE I; IMPERIAL VALLEY IMMIGRATION PROJECT, PLAINTIFFS

v.

IMMIGRATION AND NATURALIZATION SERVICE; ALAN NELSON, COMMISSIONER OF THE IMMIGRATION AND NATURALIZATION SERVICE; ATTORNEY GENERAL WILLIAM FRENCH SMITH, DEFENDANTS

FIRST AMENDED COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF (CLASS ACTION)

[Filed Dec. 16, 1983]

I

INTRODUCTION

1. This complaint challenges the implementation of a national regulation by the defendant Immigration and Naturalization Service ("INS") which becomes effective on December 7, 1983, and requires "the imposition of bond conditions against employment in the case of aliens who are placed in exclusion or deportation proceedings" by the agency. Federal Register, Vol. 48, No. 216, pages 51142-44 (November 7, 1983); 8 C.F.R. Sections 103.6 and 109.1 (1983). Placement of this condition on release from detention is automatic regardless of its relevance to ensuring the presence of the respondent at future administrative proceedings.

2. Holding that under the Immigration and Nationality Act, Section 242, 8 U.S.C. Section 1252, "there does not appear to be any reason . . . to limit conditions of release" of aliens, 48 Fed. Reg. p. 51142, and recognizing that under the regulation "more aliens might have to be detained," Id., at 51143, the INS justifies the new restriction solely as a reasonable measure for the "safeguarding of employment of U.S. citizens . . ." *Ibid.*

3. The new regulation removes the power of administrative Immigration Judges to set the conditions of bond of persons in deportation and exclusion proceedings over which the Immigration Judges preside. 8 C.F.R. Section 242.2. While the Immigration Judges are entirely independent of the INS, Federal Register, Vol. 48, No. 39, pages 8039-40 (February 25, 1983), 8. C.F.R. Section 3 (1983), coming under the jurisdiction of the Executive

Office for Immigration Review, *Ibid.*, the regulation challenged herein, which significantly reduces the power of the Immigration Judges, was only proposed and made final under order of the INS Commissioner.

4. Under the new regulation a person released from detention by defendants may obtain "work authorization" only upon a showing of "compelling reasons." 8 C.F.R. Section 103.6(a)(iii). The regulation does not provide for a due process hearing of any type, does not describe what type of form shall be used to make an application, and provides *no* time limits within which a request for work authorization must be responded to. *Ibid.* No appeal lies from the denial of an application for work authorization. *Ibid.*

5. As is more fully set forth below, plaintiffs allege that the challenged regulation is without statutory authority, is not reasonably related to the agency's statutory power to release persons on bond in a manner designed to ensure their presence at future proceedings, was promulgated unlawfully in that the INS Commissioner is without power to remove matters over which the independent Immigration Judges have jurisdiction, violates the due process clause of the Fifth Amendment in that no hearing is provided for before work authorization can be denied, and violates the Fifth Amendment's equal protection guarantee in that only indigent persons will be severly injured by the challenged regulation.

II

Jurisdiction and Declaratory Judgment

6. Jurisdiction for this action is had pursuant to 28 U.S.C. § 1331 (federal question jurisdiction); 28 U.S.C. § 1361 (mandamus jurisdiction): 8 U.S.C. § 1324 (federal district court jurisdiction for disputes arising under the Immigration Act).

7. Declaratory judgment is sought pursuant to 28 U.S.C. § 2202.

III

Parties

8. The National Center for Immigrants [sic] Rights, Inc., is a non-profit, tax-exempt corporation dedicated to the protection and promotion of the rights of immigrants and refugees residing in the United States. Located in Los Angeles, California, NCIR, Inc., represents indigent immigrants and refugees in proceedings before INS throughout the United States. NCIR, Inc., is a membership organization. It has many clients and members who will be irreparably injured unless implementation of the challenged regulation is enjoined.

9. The American Friends Service Committee is a non-profit, tax-exempt corporation dedicated, *inter alia*, to the protection and promotion of the rights of immigrants and refugees residing in the United States. With offices throughout the United States, the AFSC represents indigent immigrants and refugees in proceedings before INS. AFSC is a membership organization. It has approximately 350 clients and members (including about 80 presently in INS detention) who will be irreparably injured unless implementation of the challenged regulation is enjoined.

10. El Rescate ("The Rescue") is a non-profit organization based in Los Angeles, California, which provides legal assistance to low-income immigrants and refugees. El Rescate is a membership organization. It has many clients and members who will be irreparably injured unless implementation of the challenged regulation is enjoined.

11. Plaintiff the UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, LOCAL 645, is a duly composed union in the United States with many immigrant and refugee members currently employed in this country and under contracts protected by the National Labor Relations Act and the National Labor Relations Board. Au-

thoritative decisions issued by the National Labor Relations Board and various federal Courts of Appeal have held that undocumented immigrants and refugees are entitled to work in the United States and are eligible for the statutory protections of the National Labor Relations Act. The plaintiff union's members will be directly and unlawfully impacted by implementation of the INS regulations challenged herein. Duly authorized union members will be prohibited from working, including undocumented immigrant members who have recently won decisions from the National Labor Relations Board providing that they are entitled to work in the United States.

12. CARECEN is a non-profit, tax-exempt corporation based in Washington, D.C., which provides free legal assistance to low-income immigrants and refugees. CARECEN is a membership organization. It has many clients and members who will be irreparably injured unless implementation of the challenged regulation is enjoined.

13. The WILLAMETTE VALLEY IMMIGRATION PROJECT is a non-profit, tax-exempt corporation based in Oregon, which provides free legal assistance to low-income immigrants and refugees. The Willamette Valley Immigration Project is a membership organization. It has many clients and members who will be irreparably injured unless implementation of the challenged regulation is enjoined.

14. The EL CONCILIO MANZO is a non-profit, tax-exempt corporation based in Tucson, Arizona, which provides free legal assistance to low-income immigrants and refugees. The El Concilio Manzo is a membership organization. It has many clients and members who will be irreparably injured unless implementation of the challenged regulation is enjoined.

15. CENTRO PRESENTE is a non-profit, tax-exempt corporation based in Cambridge, Massachusetts, which provides free legal assistance to low-income immigrants and refugees. The Centro Presente is a membership organization. It has many clients and members who will be irreparably injured unless implementation of the challenged regulation is enjoined.

16. The SOUTHERN CALIFORNIA ECUMENICAL COUNCIL is a non-profit, tax-exempt corporation based in Los Angeles, California, which, *inter alia*, provides free legal assistance to low-income immigrants and refugees through a project called EPIC. The Southern California Ecumenical Council has many clients and members who will be irreparably injured unless implementation of the challenged regulation is enjoined.

17. The TUCSON ECUMENICAL COUNCIL is a non-profit, tax-exempt corporation based in Tucson, Arizona, which, *inter alia*, provides free legal assistance to low-income immigrants and refugees through a project called EPIC. The Southern California Ecumenical Council [sic] has many clients and members who will be irreparably injured unless implementation of the challenged regulation is enjoined.

18. The CENTRO PARA INMIGRANTES DE HOUSTON is a non-profit, tax-exempt corporation based in Houston, Texas, which provides free legal assistance to low-income immigrants and refugees. The Centro is a membership organization. It has many clients and members who will be irreparably injured unless implementation of the challenged regulation is enjoined.

19. The INTERNATIONAL INSTITUTE OF BOSTON is a non-profit, tax-exempt corporation based in Boston, Massachusetts, which provides free legal assistance to low-income immigrants and refugees. The Institute is a membership organization. It has many clients and members who will be irreparably injured unless implementation of the challenged regulation is enjoined.

20. The CENTER FOR IMMIGRANTS RIGHTS is a non-profit organization based in New York City, which provides free legal assistance to low-income immigrants and refugees. The Center is a membership organization. It has many clients and members who will be irreparably

injured unless implementation of the challenged regulation is enjoined.

21. The IMPERIAL VALLEY IMMIGRATION PROJECT is a non-profit organization based in El Centro, California, which provides free legal assistance to low-income immigrants and refugees in INS detention at the INS detention faciiity in El Centro, Califonia. It has many clients and members who will be irreparably injured unless implementation of the challenged regulation is enjoined.

22. *Named Individual Plaintiffs*:

(a) Plaintiff Mirza Odilia Hernandez Diaz (A24 287 610) was arrested by INS agents on or about December 10, 1983, in California. Her bond was set at $4,000 by the INS District Director in San Diego, California. She was detained in El Centro, California. On December 13, 1983, an attorney, David Stockman, filed a Notice of Appearance form (G-28) with INS in El Centro, California. On the same day a bond redetermination hearing was held before Immigration Judge Minjares upon plaintiff's application to have her bond lowered and for removal of the "no work" condition attached to her bond by the INS. Plaintiff Hernandez Diaz was not provided a due process hearing. Her hearing was not recorded in any manner, no sworn testimony was allowed, the INS's evidence was submitted solely through the hearsay statements of an INS attorney without the opportunity for cross-examination, and she was allowed no discovery of either positive or derrogatory [sic] evidence in the possession of INS. The Immigration Judge lowered her bond to $2,000 but refused to remove the "no work" condition on her bond. She has appealed this decision to the Board of Immigration Appeals, but does not expect a response for at least one to two months. Bea Hernandez Bonding Company has agreed to post her bond as a friend has liened property to the bonding company. This plaintiff will be released from detention on December 16, 1983, but is prohibited

from working. Plaintiff Diaz cannot afford to survive if she is prohibited from working under threat of arrest; she also cannot continue to retain legal counsel to represent her in INS proceedings to determine the legality of her presence in the United States. Unless the "no work" condition attached to her release bond is immediately removed, she might have no alternative but to abandon her statutory right to a due process deportation hearing.

(b) Plaintiff Maximiliano Martinez Orellana (A26 761 853) was arrested by INS agents on or about December 10, 1983, in California. His bond was set by INS at $5,000 and he has been detained at an INS facility in El Centro, California. INS has imposed a "no work" condition on his bond. On December 15, 1983, a bail redetermination hearing was held before an Immigration Judge. An application was made to reduce the amount of the bond and to remove the "no work" condition on his release bond. His bond was reduced to $2,500, but the Immigration Judge refused to remove the "no work" condition on his release bond. Plaintiff Martinez Orellana was not provided a due process hearing. His hearing was not recorded in any manner, no sworn testimony was allowed, the INS's evidence was submitted solely through the hearsay statements of an INS attorney without the opportunity for cross-examination, and he was allowed no discovery of either positive or derrogatory [sic] evidence in the possession of INS. Any appeal to the Board of Immigration Appeals would be futile because no record of his hearing was made. He is precluded from obtaining his release on bond because of the attachment of the "no work" condition attached to his bond release.

(c) Plaintiff Rosa Maria Tobar Rivas (A26 945 951) was arrested in the Harlingen INS district on or about October 27, 1983. Bond was immediately set in her case at $4,000. Attorneys for Proyecto Libertad entered a formal appearance in the case on November 14, 1983. A bond redetermination hearing before an Immigration Judge was requested on November 16, 1983. No hearing

was ever scheduled. The bond was posted on December 8, 1983. A "no work" condition of bond was attached at the time of the plaintiffs [sic] release from detention. On December 12, 1983, this plaintiff's attorneys applied to the INS District Director in Harlingen, Texas, to grant work authorization and remove the "no work" condition from the plaintiff's release bond. On the same day a renewed application was made to an Immigration Judge seeking removal of the "no work" condition of the bond. To date neither application has been responded to. Plaintiff Maria Tobar Rivas remains free on bond but is prohibited from engaging in employment.

(d) Plaintiff Guillermo Vanegas (A27 034 358) was arrested on or about December 14, 1983 by INS agents in New York. His bond was set by INS on the same day at $3,000. A bond redetermination hearing was held on December 15, 1983. His bond was lowered to $2,000, but the automatic "no work" condition placed by INS was not removed by the Immigration Judge. Plaintiff Vanegas has lived in the United States for approximately seven years, and has been at the same job with Manrook-Lassou in County of Kings for about six years. He now faces imminent loss of his job and cannot survive or afford to retain legal counsel to represent him in INS proceedings unless the "no work" condition attached to his bond is removed. While detained (or if released without the right to work) he is unable to afford to retain counsel to assist him in an appeal to the Board of Immigration Appeals. Despite his possible ability to legalize his status pursuant to 8 U.S.C. Section 1254, he will likely be forced to abandon his legal rights unless an order issues from this Court enjoining enforcement of the automatic "no work" condition placed on his bond.

(e) Plaintiff Antonio Mendoza Romero (A26 206 783) was arrested by INS agents on or about November 28, 1983, in Baltimore, Maryland. Without ever having a bail hearing before an Immigration Judge, he was bonded out of detention on or about December 12, 1983.

His bond papers prohibit him from working while awaiting INS proceedings to determine his status in the United States. Because of the "no work" condition attached to his bond, this plaintiff cannot afford to retain counsel in Baltimore and is represented by *pro bono* counsel (Patrice Perillie) in Washington, D.C. As plaintiff Romero lives in Washington, D.C., and because that is where his pro bono counsel is located, his attorney filed a motion with INS in Baltimore to change venue in the case to Washington, D.C. Plaintiff Romero cannot apply for an Immigration Judge hearing on his "no work" condition of bond in Baltimore because the "no work" provision prevents him from engaging in employment and being able to retain counsel. On the other hand, he cannot obtain a hearing in Washington, D.C., until his INS file has been transferred there from Baltimore, a matter which will take a number of weeks. In the meantime plaintiff Romero is prohibited from working, has no other sources [sic] of income, and cannot survive in the United States under such circumstances.

(f) Santos Adalberto Lopez-Duran (A26 408 989), was arrested by INS agents in Houston, Texas, on or about August 16, 1983. Release bond was set at $3,500. Shortly after his arrest, plaintiff Lopez-Duran was transferred to the INS detention facility at Los Fresnos, Texas. He is represented by Proyecto Libertad, a Texas non-profit corporation providing free and low-income legal representation to indigent persons in INS proceedings. A bond hearing was requested by his attorney, Lisa Brodyaga, on December 9, 1983. To date no bond hearing has been scheduled before an Immigration Judge. Plaintiff Lopez-Duran cannot obtain his release from detention while the "no-work" bond condition is applied in his case.

(g) Julio Fernando Lorine-Garcia (A26 408 989), is presently detained by INS at Los Fresnos, Texas. He is represented by Proyecto Libertad, a Texas non-profit corporation providing free and low-income legal representation to indigent persons in INS proceedings. A bail re-

duction hearing was requested by his attorney, Lisa Brodyaga, on December 9, 1983. To date no bail hearing has been scheduled before an Immigration Judge. Plaintiff Lorine-Garcia cannot obtain his release from detention while the no-work bond condition is applied in his case.

(h) Plaintiffs Refael Antonio Perez (A26 967 632), Raul Armando Marroquin (A26 967 801), and Ricardo Delgado Oseguena (A24 267 349) are indigent immigrants and refugees held in detention by INS. They are clients and members of El Rescatē, a California nonprofit organization providing free legal assistance to indigent immigrants and refugees. The "no work" condition attached to their INS bonds has precluded their release on bond pending the completion of INS proceedings to determine the legality of their status in the United States. But for the "no work" condition attached to their bonds, El Rescate could obtain their release from detention with the assistance of religious and lay supporters of the organization who generally provide sponsorship and/or collateral to obtain the services of bondsmen.

(i) Plaintiff Miguel Angel Gomez-Vasquez (A27 176 926) was arrested by border patrol agents on or about October 27, 1983, near Laredo, Texas. On the same day as his arrest, bond was set in the amount of $7,500. He was later transferred to an INS detention facility in El Paso, Texas. On or about November 3, 1983, a notice of appearance form (G-28) was filed on his behalf by attorney Patrick Hughes, of Proyecto Libertad. A telephonic bond redetermination hearing was held with an Immigration Judge at El Paso after his transfer there and bond was reduced to $2,500. Bond was posted on December 8, 1983. At the time of his release from detention, after the telephonic hearing with an Immigration Judge, INS attached a "no work" condition on his release bond. On December 13, 1983, his attorney requested that the "no work" condition be removed from his bond, or that the bond proceeding be reopened before the

Immigration Judge. The INS in El Paso, Texas, advised this plaintiff's counsel that it would "consider" the request. To date no response to the request has been received. Plaintiff Gomez-Vasquez is now released from custody but precluded from working in the United States pending the outcome of INS proceedings to determine the legality of his presence in the United States.

(j) Plaintiffs Fidel Angel Henriquez Duran (A26 946 307) and Daniel Antonio Garcia Reyes (A26 946 308) were arrested in the Harlingen INS district on or about November 20, 1983. INS bonds were set at $4,000. They were represented by both CARECEN (an organizational plaintiff herein) and Proyecto Libertad. Bonding arrangements were made and efforts were made to post bond on December 8, 1983. At that time, INS informed the bonding company, National Bonding Co., that "no-work" conditions would be placed on the bonds. Thereafter the National Bonding Company withdrew the bonds. A hearing was requested with an Immigration Judge on December 9, 1983, to remove the "no-work" condition from the bonds. To date, no hearings have been scheduled. These plaintiffs remain in detention on this date.

(k) Plaintiff Ana Berta Martinez (A27 180 007) was arrested near Laredo, Texas, on or about October 25, 1983. Her INS bond was set at $7,500. Shortly thereafter, she was transferred to the INS detention facility at Los Fresnos, Texas. She is represented by Proyecto Libertad. Her attorneys requested a bond redetermination hearing with an Immigration Judge on November 1, 1983. A hearing was almost held on December 6, 1983, but was cancelled because of the crowded docket. A renewed request was filed with the Immigration Judge on December 9, 1983. To date, no new hearing has been scheduled. Due to the INS delay in scheduling a bond redetermination hearing before an Immigration Judge for this plaintiff, she now cannot be released from detention without a "no work" condition attached to her bond.

(l) Plaintiff Dionisio Navarette Merlos (A26 946 247) was arrested by the Border Patrol in the Harlingen INS district on or about November 16, 1983. INS bond was set at $4,000. He is represented by Proyecto Libertad. His attorneys requested a bond redetermination hearing with an Immigration Judge on November 25, 1983. On November 30, 1983, his bond was administratively reduced by the INS District Director to $3,500 pursuant to 8 C.F.R. Section 242.2(a). On December 9, and again on December 12, 1983, his attorney inquired of an INS Deportation Officer at the Los Fresnos detention facility and the Chief Legal Officer for the Harlingen District whether a "no-work" condition would be placed on his bond when it was posted. The Officers stated that it was the position of the Harlingen District that such conditions were to be placed on all bonds posted on or after December 7, 1983, without regard to the date on which the bond was originally set by INS. Plaintiff Navarette Merlos now has the necessary prerequisites to post bond, but is prevented from doing so by the "no-work" condition which INS will place on his bond when it is posted.

All of the individually named plaintiffs are without the financial means to support themselves without the ability to be employed. These plaintiffs, while prohibited from working, are also without the financial means to retain counsel to assist them in Immigration Judge hearings or appeals to the Board of Immigration Appeals concerning the prohibition preventing them from working while involved in INS proceedings. Under the guidelines established in defendants' challenged regulation, the plaintiffs cannot establish a "compelling reason" to be employed (other than the need to eat, etc.) while INS processes their pending applications for benefits which might entitle them to lawfully remain in the United States. They cannot even afford to retain counsel to assist them in such applications. They are also aware that such applications

take from about one month to two years to process by INS. Like all other immigrants and refugees with applications for benefits pending before the Immigration Service, these plaintiffs need to be employed so that they can obtain the bare necessities of life (food, clothing, shelter, medical services, etc.) while INS adjudicates their applications for benefits, a matter which might take more than one year. Many of these plaintiffs also have children to support.

23. JANE DOE I is an immigrant who is currently in the process of preparing various applications for immigration statutory benefits and who intended to surrender to the INS and apply for such benefits in the coming weeks. Until December 7, 1983, this plaintiff could have surrendered to the INS to apply for benefits knowing that she would likely be released from detention under bond within a matter of hours or days. This plaintiff will not surrender to INS to seek statutory benefits on or after December 7, 1983, because she has become aware of the challenged regulation and is afraid that she will never win release from detention if she surrenders to INS once the challenged regulation is implemented.

24. Defendant the IMMIGRATION AND NATURALIZATION SERVICE is an agency of the Department of Justice and is responsible for implementing the Immigration and Nationality Act, 8 U.S.C. Sections 1101, *et seq.*

25. Defendant Alan Nelson is the duly appointed Commissioner of the INS and was the person responsible for the promulgation of the challenged regulation.

26. Defendant WILLIAM FRENCH SMITH is the Attorney General of the United States and is statutorily responsible for implementation of the Immigration and Nationality Act. 8 U.S.C. Section 1103.

IV

CLASS ACTION

27. Pursuant to Rule 23(a) and (b)(2), plaintiffs seek to have this case certified as a class action on behalf of all persons whose release from INS detention on or after December 7, 1983, will be conditioned by the no employment restriction found in the challenged regulations, 8 C.F.R. Sections 103.6 and 109.1.

28. Defendants' challenged regulation is or will be applied in a uniform manner to all persons in INS detention on or after December 7, 1983, and the issues of law and fact raised by plaintiffs and their proposed class members are identical. The number of class members is in the thousands and is too large to feasibly join in this action.

V

FIRST CAUSE OF ACTION

27. Plaintiffs incorporate herein by reference all proceeding [sic] paragraphs.

28. The INS has the statutory authority to arrest and detain persons reasonably believed to be aliens unlawfully present in the country. 8 U.S.C. Section 1252(a). The Attorney General has the statutory discretion and due process obligation to release persons "under bond . . . containing such conditions as the Attorney General may prescribe . . ." *Ibid.*; 8 C.F.R. Section 242.2.

29. 8 C.F.R. Sections 103.6 and 109.1 (1983) are without statutory authority in that the broad prohibition against employment contained in these regulations is not reasonably related to ensuring the respondent's presence at future administrative hearings. Nor is the employment restriction reasonably related to any other legitimate governmental interest justifying the imposition of the restriction. The challenged regulations are arbitrary, capricious and an abuse of discretion.

VI

SECOND CAUSE OF ACTION

30. Plaintiffs incorporate herein by reference all proceeding [sic] paragraphs.

31. The INS Commissioner is without statutory authority to promulgate a final regulation which removes jurisdiction from the independent Immigration Judges on bond matters and places authority for such matters in the hands of INS employees of the Commissioner. Since February 1983 the Special Inquiry Officers have no longer been under the jurisdiction of the INS Commissioner, and now are directed in "the execution of their duties" by the "newly created" Executive Office of Immigration Review. Federal Register, Vol. 48, No. 39 (February 25, 1983) pages 8039 (amending 8 C.F.R. Section 3) and 8057 (amending 28 C.F.R. Section 0.19). 8 C.F.R. Section 3 (1983) and 28 C.F.R. Section 0.105 (1983) clearly withdrew the INS Commissioner's authority over Special Inquiry Officers. The Attorney General has only delegated to the INS Commissioner certain administrative functions, "except the authority delegated to the Executive Office for Immigration Review . . . [and] Special Inquiry Officers." 8 C.F.R. Section 100.2 (amended 1983) (Federal Register, Vol. 48, No. 39, page 8040. [sic] The INS Commissioner's final regulation is unlawful and void.

VII

THIRD CAUSE OF ACTION

32. Plaintiffs incorporate by reference all proceeding [sic] paragraphs.

33. The employment prohibition contained in 8 C.F.R. Sections 103.6 and 109.1 violate [sic] the due process clause of the Fifth Amendment in that they [sic] seek to completely and totally restrict the exercise of an important liberty without the opportunity for notice and hearing and a due process proceeding of record.

VIII

FOURTH CAUSE OF ACTION

34. Plaintiffs incorporate by reference all proceeding [sic] paragraphs.

35. The employment prohibition contained in 8 C.F.R. Sections 103.6 and 109.1 violate [sic] the equal protection guarantee of the Fifth Amendment in that the loss of the right to be employed imposed by the regulations remains in effect for as long as the INS takes to process the immigrant or refugee's pending application(s) and, without regard to any difference in their circumstance concerning their likelihood of appearing in future administrative proceedings, adversely affects indigent people while not affecting similarly situated persons with financial resources.

IX

FIFTH CAUSE OF ACTION

36. Plaintiffs incorporate by reference all proceeding [sic] paragraphs.

37. Defendants' challenged regulation is inconsistent with and is superceded by federal laws which allow all immigrants and refugees (other than those present in the country with non-immigrant visas) to be employed and to be eligible for the benefits of protective labor legislation. 29 U.S.C. Sections 141, *et seq.* (National Labor Relations Act); 29 U.S.C. 201-219 (Fair Labor Standards Act); 29 U.S.C. Section 651, *et seq.* (Occupational Safety and Health Act).

X

SIXTH CAUSE OF ACTION

38. Plaintiffs incorporate by reference all proceeding [sic] paragraphs.

39. Defendants have unlawfully failed to establish uniform standards and procedures to implement "work authorization" policies under existing policies and regula-

tions (including 8 C.F.R. Sections 109.1(b)(2), 208.4), and have arbitrarily and capriciously denied work authorization, or failed to respond to requests for work authorization, without compliance with substantive or procedural Fifth Amendment due process and in a manner contrary to law.

XI

IRREPARABLE INJURY

40. Plaintiffs and the members and clients of the plaintiff organizations will suffer irreparable injury unless an injunction is issued prohibiting enforcement of the unlawful INS regulations challenged herein. This injury will include, *inter alia*, the inability of persons to bond out of detention pending lengthy administrative proceedings without regard to their likelihood to appear at future hearings, the forced abandonment of applications and petitions for important statutory benefits for lawful status due to indefinite detentions and the release of persons without affording them the opportunity to obtain the basic necessities of life, and the separation of families through unnecessary detentions.

XII

PRAYER FOR RELIEF

Wherefore, plaintiffs pray that this Court:

1. Assert jurisdiction over this complaint;

2. Issue a temporary restraining order prohibiting implementation of 8 C.F.R. Sections 103.6(a)(2)(ii)-(iii) and 109.1(b)(8);

3. Issue a preliminary injunction prohibiting implementation of 8 C.F.R. Sections 103.6(a)(2)(ii)-(iii) and 109.1(b)(8);

4. Issue a permanent injunction prohibiting implementation of 8 C.F.R. Sections 103.6(a)(2)(ii)-(iii) and 109.1(b)(8);

5. Issue a declaratory judgment providing that 8 C.F.R Sections 103.6(a)(2)(ii)-(iii) and 109.1(b)(8) are without statutory authority, bear no reasonable relationship to respondents' future appearances at deportation proceedings, bear no relationship to any other legitimate government interest, violate the due process clause and the equal protection guarantee of the Fifth Amendment, and were promulgated in an unlawful manner in that the INS Commissioner has no jurisdiction over the Special Inquiry Officers;

6. Grant plaintiffs reasonable costs and attorneys fees;

7. Grant such further relief as the Court may deem just and proper.

DATED: December 5, 1983

By: /s/ Peter A. Schey
PETER A. SCHEY
Counsel of Record
for Plaintiffs

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

No. CV 83-7927-Kn

NATIONAL CENTER FOR IMMIGRANTS [sic] RIGHTS, INC., ET AL., PLAINTIFFS

v.

IMMIGRATION AND NATURALIZATION SERVICE, ET AL., DEFENDANTS

ANSWER TO FIRST AMENDED COMPLAINT

[Filed Sep. 4, 1984]

Defendants answer the First Amended Complaint as follows:

1. Paragraphs 1 through 5 contain plaintiffs' characterization of their lawsuit with reference to various statutory and regulations [sic] provisions. Said paragraphs do not contain any averments of fact to which a response is required. However, insofar as a response may be deemed required, defendants state that the statutory and regulatory provisions speak for themselves and deny any factual allegations contained in paragraphs 1 through 5.

2. Inasmuch as paragraphs 6 and 7 attempt to set forth jurisdiction of this Court, said paragraphs contain legal conclusions to which no answer is required. However, defendants affirmatively assert that for reasons stated in their Motion to Dismiss to this Court, there is no jurisdiction over this matter.

3. Paragraphs 8 through 21 contain various factual details concerning the non-profit corporate and union

plaintiffs to which, except for the geographical averments which the defendants admit and the averment denied below, the defendants lack sufficient knowledge or information at this time to form a belief as to the truth thereof. To the extent that any of the aforementioned plaintiffs claim that they or their clients/members will be irreparably injured by the regulation in dispute, the defendants deny said averment.

4. In answering paragraph 22, defendants are informed, believe and therefore affirmatively make the allegations contained in Exhibit "A" hereto. Except as so admitted in Exhibit A, the defendants deny each and every averment contained in paragraph 22.

5. Defendants are without any information or knowledge to form a belief as to the truth of the averments of paragraph 23 and thus deny them.

6. Defendants admit the allegations in paragraphs 24 through 26.

7. Paragraphs 27 and 28 contain characterizations of this lawsuit and not averments of fact to which a response is required. But, insofar as a response may be deemed required, defendants deny.

8. In answering paragraph 27 of the First Cause of Action [1] defendants incorporate herein all preceding paragraphs.

9. Paragraph 28 of the First Cause of Action contains only conclusions of law to which no response is required but to the extent a response is deemed required, defendants admit them.

10. Paragraphs 29, 33, 35, 37, and 39 contain conclusions of law to which no response is required; but to the extent a response is deemed required, defendants deny.

11. In answering paragraph 31: (a) defendants state that the first sentence only contains a conclusion of law to which no response is required, but to the extent a response is deemed required, defendants deny; (b) defendants admit the second and third sentences; and (c) defendants deny the fourth sentence.

[1] The Amended Complaint has duplicative numbered paragraphs 27 and 28.

12. In answering paragraphs 30, 32, 34, 36 and 38 defendants incorporate herein all preceding paragraphs.

13. Defendants deny the allegations in paragraph 40.

14. The remaining paragraphs of the Complaint delineate plaintiffs' prayer for relief to which no response is required.

AFFIRMATIVE DEFENSES

1. The Amended Complaint fails to state any claim upon which relief can be granted.

2. This Court lacks subject matter jurisdiction.

3. This action is not ripe.

4. The plaintiffs have failed to exhaust their administrative remedies.

5. The plaintiffs lack standing.

DATED: This 4th day of September, 1984.

ROBERT C. BONNER
United States Attorney
FREDERICK M. BROSIO, JR.
Assistant United States Attorney
Chief, Civil Division
INGRID K. HRYCENKO
Special Assistant U.S. Attorney

/s/ George H. Wu
GEORGE H. WU
Assistant U.S. Attorney

Attorneys for Defendants

[Exhibit Omitted in Printing]

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

No. CV 83-7927-KN (JRx)

NATIONAL CENTER FOR IMMIGRANTS' RIGHTS, INC., ET AL.,
PLAINTIFFS

v.

IMMIGRATION AND NATURALIZATION SERVICE, ET AL.,
DEFENDANTS

FINDINGS OF FACT AND CONCLUSIONS OF LAW

[Filed Jul. 1, 1985]

This matter came on for hearing on Defendants' motion for summary judgment and the court, having considered the briefs filed by the parties, and all of the evidence and pleadings on file in this matter, enters the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

To the extent that any of the Conclusions of Law stated herein are deemed to be Findings of Fact, they are incorporated herein by reference.

1. In 1983, the Immigration and Naturalization Service ("INS") promulgated Regulations[1] (the "Regulations") which place a condition barring employment (a "no-work condition") in an appearance and delivery bond in connection with deportation proceedings.

[1] 8 C.F.R. §§ 103.6(a)(2)(ii), (iii) (1983); 109.1(b)(8) (1983). Federal Register, Vol. 48, No. 42, pages 51142-51144 (November 7, 1983).

2. The previous INS regulations provided that in his discretion the District Director, with the prior approval of the INS Regional Commissioner, could include a condition barring unauthorized employment in an appearance and delivery bond in connection with deportation proceedings.[2] In the Regulations now being challenged, the INS does away with individualized determinations.

3. Suspected deportable aliens released from INS custody on a bond including the no-work condition and later found engaged in employment could be rearrested and thereafter detained pending the final outcome of their deportation proceedings.

4. On December 16, 1983, after hearing evidence and testimony, the Court granted a preliminary injunction enjoining the enforcement of the Regulations. The Court of Appeals upheld the preliminary injunction on September 28, 1984. *National Center for Immigrants' Rights, Inc. v. Immigration and Naturalization Service*, 743 F. 2d 1365 (9th Cir. 1984).

5. The INS then brought a motion for summary judgment, pursuant to Fed. R. Civ. P. 56(b), on grounds that there existed no genuine issue of material fact and that summary adjudication was appropriate. The Court finds that no genuine issue of material fact exists as to plaintiffs [sic] First Cause of Action and that summary adjudication as to that cause is appropriate.

CONCLUSIONS OF LAW

To the extent that any of the foregoing Findings of Fact are deemed to be Conclusion [sic] of Law, they are incorporated herein by reference.

1. Summary judgment may be granted to the nonmoving party. *Cool Fuel, Inc. v. Connett*, 685 F.2d 309

[2] *Matter of Vea*, Interim Decision #2890 at 5 (BIA 1981); *Matter of Leon-Perez*, 15 I & N Dec. 239 (BIA 1975); 8 C.F.R. § 103.6(a)(2)(ii).

(9th Cir. 1982); Wright and Miller, *Federal Practice and Procedure*, § 2720 (1983).

2. The Court properly has jurisdiction over Plaintiffs' claims under the immigration statutes, 8 U.S.C. § 1329, 28 U.S.C. § 1331, and the Constitution.

3. The challenged regulations state in relevant part:

> § 103.6 Surety Bonds.
>
> (a) . . . .
>
> (2) *Bond riders*—(i) *General.* Bond riders shall be prepared on Form I-351 and attached to Form I-352. If a condition to be included in the bond is not on Form I-351, a rider containing the condition shall be executed.
>
> (ii) *Condition against unauthorized employment.* A condition barring employment shall be included in an appearance and delivery bond in connection with a deportation proceeding or bond posted for release of an alien in exclusion proceedings, unless the District Director determines that employment is appropriate.
>
> (iii) *Factors to be considered.* Only those aliens who upon application under § 109.1(b) of this chapter establish compelling reasons for granting employment authorization may be authorized to accept employment. Among the factors which may be considered when an application is made, are the following:
>
> (A) Safeguarding employment opportunities for United States citizens and lawful permanent resident aliens;
>
> (B) Prior immigration violations by the alien;
>
> (C) Whether there is a reasonable basis for considering discretionary relief; and
>
> (D) Whether a United States citizen or lawful permanent resident spouse or children are dependent upon the alien for support, or other equities exist.

> § 109.1 Classes of aliens eligible.
>
> . . . .
>
> (b) . . . .
>
> (8) Any excludable or deportable alien who has posted an appearance and delivery bond may be granted temporary employment authorization if the District Director determines that employment is appropriate under § 103.6(a)(2)(iii) of this chapter.
>
> . . . .

8 C.F.R. §§ 103.6, 109.1 (1983).

4. The Court grants summary judgment on the First Cause of Action and finds as a matter of law that the Regulations at issue were promulgated without statutory authority and therefore are invalid. Since the Court grants summary judgment as to Plaintiffs' First Cause of Action, consideration of the remaining five causes of action is unnecessary.

5. The Attorney General cannot impose release conditions based on the Immigration and Nationality Act ("INA"), § 242(a), 8 U.S.C. § 1252(a), which further perceived [sic] a broad purpose of the INA, but which are unrelated to securing the suspected illegal alien's presence at future deportation proceedings.

6. INA § 242(a), 8 U.S.C. § 1252(a) provides in part:

> Pending a determination of deportability in the case of any alien . . ., such alien may, upon warrant of the Attorney General, be arrested and taken into custody. Any such alien taken into custody may, in the discretion of the Attorney General and pending such final determination of deportability, (1) be continued in custody; or (2) be released under bond in the amount of not less than $500 with security approved by the Attorney General, containing such conditions as the Attorney General may prescribe; or (3) be released on conditional parole. But such bond

or parole, whether heretofore or hereafter authorized, may be revoked at any time by the Attorney General, in his discretion, and the alien may be returned to custody and detained until final determination of his deportability.

7. Although § 1252(a) appears on its face to grant a great deal of discretion to the Attorney General in his decision on whether to release an alien on bond, this discretion must be interpreted in light of a previous version of § 1252(a), as contained in § 242 of the INA, and its legislative history, as well as administrative and judicial decision [sic] concerning the scope of the Attorney General's discretion.

8. The previous version of § 1252(a) read in part:

> . . . such alien may, in the discretion of the Attorney General, (1) be continued in custody; or (2) released under bond in the amount of not less than $500, with security approved by the Attorney General; or (3) be released on conditional parole. It shall be among the conditions of any such bond, or of the terms of release on parole, that the alien shall be produced, or will produce himself when required to do so for the purpose of defending himself against the charge or charges under which he was taken into custody . . .

Pub. L. 831, 81st Cong., 1st Sess. § 23, reprinted in 1950 U.S. Code Serv. 1006.

The accompanying legislative history of the earlier version of § 1252(a) stated:

> These provisions, of course, enumerate only one of the conditions which is mandatory in the bond or as a parole condition. *This bill intends that the Attorney General shall have full discretion in imposing any other conditions or terms in the bond or parole agreement which he may see fit to include. Thus, a man released on bond might have as a condition of*

> *the bond that he also be subject to make periodic reports to the immigration officials as to his whereabouts and furnish other desired information.* Or a bond might provide as one of its conditions that upon demand by the Attorney General the existing bond shall be surrendered and a new bond in greater or less amount or other conditions shall be furnished. This bill intends that the Attorney General shall have untrammeled authority to impose such conditions or terms as he sees fit in releasing an alien under bond or conditional parole pending final determination of the deportability of the alien . . .

H.R. Rep. No. 1192, 81st Cong., 1st Sess. 6 (1949); S. Rep. No. 2239, 81st Cong., 2d Sess. 5 (1950) (emphasis added).

9. When Congress enacted § 1252(a) in its present form, the legislative history indicates that "this provision, in general, follows the procedure established by § 23 of the Subversive Activities Control Act of 1950." H.R. Rep. No. 1365, 82 [sic] Cong., 2d Sess., 57, reprinted in 1952 U.S. Code Cong. & Ad. News 1653, 1711.

10. The aforementioned legislative history indicates that the Attorney General's discretion to condition release on bond pending the outcome of a deportation proceeding is properly limited to conditions which are related to securing an alien's appearance at future proceedings.

11. (A) The INS' reliance on *Carlson v. Landon*, 342 U.S. 524, 72 S.Ct. 525, 96 L. Ed. 547 (1952), in asserting that the Attorney General may condition release on the basis of protecting the American labor market is misplaced. *Carlson* involved a challenge to the Attorney General's power to hold five active Communists without bail pending the determination of their deportability. The Supreme Court examined the applicable deportation standards and found that in carrying out the policies and standards as to what aliens are subject to deportation, "the Attorney General is not left with un-

trammeled discretion as to bail. . . . He must justify his refusal of bail by reference to the legislative scheme to eradicate the evils of Communist activity." 342 U.S. 524, 543.

(B) The *Carlson* Court examined the specific legislative scheme of Title I, Section 2 of the Internal Security Act of 1950 and found that the statute granted the Attorney General discretion broad enough to justify his detention of the Communists. *Id.*, at 541. The statute provides in pertinent part:

> The Communist organization in the United States, pursuing its stated objectives, the recent successes of Communist methods in other countries, and the nature of the world Communist movement itself, present a clear and present danger to the security of the United States and to the existence of free American institutions, and make it necessary that Congress, in order to provide for the common defense, to preserve the sovereignty of the United States as an independent nation, and to guarantee to each State a republican form of government, enact appropriate legislation recognizing the existence of such world-wide conspiracy and designed to prevent it from accomplishing its purpose in the United States.

Internal Security Act, Title I, § 2(15) (1950). Based on its examination of the legislative scheme, the *Carlson* Court found that this provision was,

> designed to eliminate the subversive activities of resident aliens who seek to inculcate the doctrine of force and violence into the political philosophy of the American People. To this end provision was made for the detention and deportation of certain noncitizens, including members of the Communist Party.

342 U.S. at 544. The Court found that the Communist threat to the national security was controlling: ". . . we

also take into consideration the factors of probable availability for trial, which we do not think is of great significance in cases involving security from Communist activities of alien Communists . . ." *Id.*, at 541, n. 35.

(C) In *Carlson* the Court concluded that "[a]s the purpose of the Internal Security Act to deport all Alien Communists as a menace to the security of the United States is established by the Internal Security Act itself, Title I, Section 2, we conclude that the discretion as to bail in the Attorney General was certainly broad enough to justify his detention of all these parties without bail as menace to the public interest." 342 U.S. at 541.

(D) The broad scope of discretionary power granted to the Attorney General by Section 2 of the Internal Security Act is distinguishable from his power to impose bond conditions under the INA. As the Court of Appeals noted in *National Center for Immigrants*" [sic] *Rights, Inc.*:

> In contrast to Congress' clear directives under the Internal Security Act in the area of national security, "the INA evinces 'at best evidence of peripheral concern with the employment of illegal entrants.'" *Sure-Tan, Inc. v. NLRB*, 104 S. Ct. 2803 (1984), [sic] (quoting *De Canas v. Bica*, 424 U.S. 351, 361 (1976)).

National Center for Immigrants' Rights, Inc., supra, 743 F.2d at 1370.

12. Supreme Court cases concerning the employment of deportable aliens cast doubt on the INS' assertion that the legislative scheme of the INA justifies the Attorney General's exercise of discretion to impose no-work conditions on release. The *De Canas* Court stated:

> The central concern of the INA is with the terms and conditions of admissions to the country and subsequent treatment of aliens lawfully in the country. The comprehensiveness of the INA scheme for regulation of immigration and naturalization, without

more, cannot be said to draw in the employment of illegal aliens as "plainly within . . . (that) central aim of federal regulation."

424 U.S. 351, 359; *see also Sure-Tan, Inc. v. NLRB*, 104 S. Ct. 2803, 2809.

13. INA § 242(a), 8 U.S.C. § 1252(a), does not authorize the Attorney General to impose a blanket prohibition against employment of all suspected deportable aliens pending the outcome of their due process expulsion proceedings.

14. (A) *Carlson* does not lend credence to INS' position that the Attorney General possesses such broad authority. In *Carlson* there was evidence as to each individual, "indicating . . . that he was at the time of arrest a member of the Communist Party of the United States and had . . . participated . . . in the Party's indoctrination of others to the prejudice of the public interest." 342 U.S. at 530.

15. In conformity with judicial precedent, under the prior regulation the INS required specific, individualized information to justify an employment prohibition condition in each case. *Matter of Vea*, Interim Decision #2890 at 5 (BIA 1981 [sic]; *Matter of Leon-Perez*, 15 I & N Dec. 239 (BIA 1975); [sic] In *Matter of Chew*, 15 I & N Dec. 2910 (BIA 1982), the Board of Immigration Appeals upheld an employment restriction as a condition of bond based on a find [sic] that it was "appropriate in this case." *Id.*, at 265.

DATED: July 1, 1985

/s/ David V. Kenyon
DAVID V. KENYON
United States District Judge

SUPREME COURT OF THE UNITED STATES

No. 90-1090

IMMIGRATION AND NATURALIZATION SERVICE, ET AL., PETITIONERS

v.

NATIONAL CENTER FOR IMMIGRANTS' RIGHTS, INC., ET AL.

ORDER ALLOWING CERTIORARI

[Filed April 1, 1991]

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted limited to Question 2 presented by the petition.

April 1, 1991

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